IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 7-3-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.2047 of 2007
M.P.No.1 of 2007

Indian Oil Corporation,
LPG Plant Labour Union,
rep.by its President,
Government College Engineering Campus,
Salem - 636 011. ... Petitioner

Vs.

1. Assistant Labour Commissioner (Central)
Office of the Regional
Labour Commissioner (Central),
No.26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

2. The Plant Manager,
LPG Bottling Plant,
Indian Oil Corporation,
Government College Engineering Campus,
Salem - 636 011.

3. M/s.A.S.K.Agencies,
Engineers and Contractors,
Hotel Sree Murugan Buildings,
56, Devi & Co Lane,
Coimbatore - 641 018. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus forbearing the 2nd and 3rd respondents from reducing the staff strength of contract labourers employed in the 2nd respondent's LPG bottling plant unless and until the terms of the 12(3) settlement dated 5.3.2003 is replaced or modified by a new settlement or award.

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For Petitioner : Mr.D.Hariparanthaman

For 2nd Respondent : Mr.T.S.Gopalan

For 3rd respondent : Mr.D.Balan Haridoss

O R D E R

By consent of the learned counsel appearing for the petitioner as well as contesting respondents, the writ petition is taken up for final disposal.

2. Prayer in the writ petition is to issue a writ of mandamus forbearing the 2nd and 3rd respondents from reducing the staff strength of contract labourers employed in the 2nd respondent's LPG bottling plant unless and until the terms of the 12(3) settlement dated 5.3.2003 is replaced or modified by a new settlement or award.

3. The facts necessary for disposal of the writ petition are as follows.

(a) Petitioner Union with registration No.510/SLM, signed various settlements regarding wages and other conditions of service under section 12(3) of the Industrial Disputes Act, 1947, with the contractors in the presence and with active and full participation of the second respondent. The last settlement under section 12(3) was signed on 5.3.2003 regarding manpower requirement, workload, wage revision, etc. According to the said settlement, the petitioner Union agreed for reduction of manpower, particularly to deploy 20 persons per shift for handling work, 16 persons per shiff for loading and unloading work, and 12 persons for house keeping work (general shift). Both loading and unloading work are carried out in two shifts and therefore 84 workmen will be employed in a day out of 114 workmen, on turn basis. The period of settlement was from 5.3.2003 to 31.5.2005.

(b) The petitioner Union raised an industrial dispute on 29.3.2005 before the first respondent wherein apart from demanding revision of wages from 1.4.2005, also demanded additional manpower for certain work and area and also for resumption of general shifts for handling work and also regularisation/permancncy of the workers.

(c) Based on the dispute/claim made by the petitioner Union, the first respondent issued notice for a Conciliation meeting on 26.5.2005 to the second respondent and the earlier contractor. The second respondent changed the contractor and appointed the third respondent with effect from 1.7.2005. Therefore the petitioner submitted application on 9.9.2005 before the first respondent to implead the third respondent as a party respondent in the dispute and the third respondent was impleaded. The first respondent

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issued another notice on 15.9.2005 and posted the conciliation meeting on 26.9.2005.

(d) The petitioner's proposal to go on total strike was abandoned due to the advice given by the first respondent as charter of demands are already ceased of for conciliation and conciliation proceedings are pending. It is also submitted by the petitioner that all issues, particularly manpower requirement are under conciliation on various dates i.e., on 27.1.2006, 27.7.2006, 25.8.2006 and it was postponed and conciliation proceedings were adjourned to 14.9.2006 and thereafter no meeting was held by the first respondent for coniliation.

(e) On 1.1.2007, the third respondent unilaterally issued a notice under section 9A of the Industrial Disputes Act, 1947, and proposed to drastically reduce the manpower with effect from 22.1.2007. Immediately thereafter, petitioner objected the unilateral action of the third respondent before the first respondent by letter dated 12.1.2007, followed with reminder dated 18.1.2007 and the first respondent through his proceedings dated 18.1.2007 intimated the respondents 2 and 3 herein that the conciliation talk will be held on 14.2.2007 with a view to bring amicable settlement to the dispute and the respondents were directed to attend the same either in person or through a duly authorised representative. It is also informed that section 33 of the Industrial Disputes Act, is being invoked, the respondents have to ensure the strict compliance of the same, failing which necessary action as deemed fit will be taken without further intimation. In spite of the said communication, the respondents attempted to reduce the staff strength. Therefore, petitioner filed the present writ petition with the prayer above mentioned.

4. The second respondent filed counter affidavit wherein it has pointed out the requirement for reduction of manpower as volume of work allotted by the Corporation got reduced to it. It is also admitted in the counter affidavit that the third respondent issued notice on 1.1.2007 under section 9A of the Industrial Disputes Act, 1947, proposing deployment of the workmen from 22.1.2007 at 44 men per day for two shifts and consequently petitioner approached the first respondent for intervention and the first respondent issued conciliation notice on 18.1.2007 fixing the date for conciliation as 14.2.2007 and therefore petitioner's writ petition is premature. It is also contended in the counter affidavit that the petitioner can raise industrial dispute and therefore it is having an alternate remedy and the second respondent has no role to play since the matter in issue is between the petitioner and the third respondent.

5. Third respondent also filed counter affidavit wherein it is stated that pursuant to 12(3) settlement entered into as stated in the affidavit of the petitioner, third respondent was employing 84 persons and due to the reduction of workload, third responent is bound to reduce the staff strength and therefore he has issued

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notice under section 9A of the Industrial Disputes Act, 1947, expressing its desire to re-adjust the manpower from 84 to 44 persons. It is also contended in the counter affidavit that the earlier settlement has come to an end on 31.3.2005 and the third respondent is not a party to the said settlement and the petitioner Union can only approach the Industrial Adjudicator and not entitled to approach this Court with the above prayer.

6. I have considered the rival submissions made by the learned counsel for the petitioner Union as well as respective respondents.

7. The point in issue is whether there is any dispute pending between the petitioner Union and the respondents 2 and 3 before the first respondent at the instance of the writ petitioner and whether the attempt of the respondents 2 and 3 in reducing the staff strength is justified.

8. It is seen from the records that on 29.3.2005 the petitioner Union raised dispute with regard to the manpower reduction along with 31 other demands before the first respondent, pursuant to which the first respondent issued notices to the respondents for conciliation talk and from the proceedings of the first respondent dated 28.9.2005, the then contractor was instructed by the first respondent stating that the matter has already been seized for conciliation and conciliation proceedings have also commenced and therefore the then contractor was advised not to precipitate the matter and the petitioner was also requested not to proceed on strike on 29.9.2005 as proposed. It is also not in dispute that the third respondent was impleaded after he become contractor in the said proceeding pending before the first respondent. The learned counsel for the petitioner submitted that the second respondent while giving contracts to the Contractors, is entering into an agreement, which clearly contains a clause that the settlement between Workers' Union should be honoured. The said fact is not disputed by the learned counsel for the respondents 2 and 3.

9. Apart from the said factual aspect, section 18(3)(b) of the Industrial Disputes Act, 1947, clearly states that the settlement is binding on all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board/Arbitrator/Labour Court/ Tribunal or National Tribunal, as the case may be, records opinion that they were so summoned without proper cause. Further under Section 18(3)(c) of the Act, the settlement is binding on the parties not only referred to in clause (a) or clause (b) but also to an employer, his heirs, successor or assigns in respect of the establishment to which the dispute relates. Here in this case, admittedly the third respondent is summoned to appear for the conciliation proceedings and the third respondent as the successor of the original contractor is now given the contract by the second respondent. Hence the petitioner is right in contending that the third respondent cannot vary the conditions of service of the staff, particularly reduction of staff

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strength pending conciliation proceedings. The minutes of discussion recorded by the first respondent dated 27.7.2006 during the conciliation proceedings made between the petitioner, second and third respondents is filed in the typed set of papers at page No.30. It is not the case of the respondents 2 and 3 that Conciliation Officer has submitted his failure report to the Government. Therefore the dispute raised by the petitioner is admittedly pending.

10. In the meanwhile, the third respondent issued Section 9A notice to effect changes in the staffing pattern on 1.1.2007 with effect from 22.1.2007. It is also not in dispute that on 18.1.2007 the petitioner Union pointed out this unilateral action of the third respondent before the first respondent and consequently the first respondent specifically stated through his proceeding dated 18.1.2007 addressed to the third respondents 2 and 3, not to alter the conditions of service. The proceeding dated 18.1.2007 reads as follows,

"GOVERNMENT OF INDIA
MINISTRY OF LABOUR
OFFICE OF THE DY.CHIEF LABOUR COMMISSIONER (CENTRAL),
NO.26, HADDOWS ROAD, SHASTRI BHAVAN,
CHENNAI - 600 006.

No.M.8/3/2007-B2 Date: 18.1.07

To
The General Secretary,
Indian Oil Corporation
LPG Plant Labour Union,
Government College of
Engineering Campus,
Salem - 636 011.

M/s.ASK Agencies,
Hotel Sree Murugan
Buildings,
No.56,Davey&Co Lane,
Coimbatore - 641 018.

The Management,
IOC Bottling Plant,
Salem.

Sir,

Sub: I.D.Act, 1947 - I.D.between Indian Oil Corporation L.P.G.Plant Labour Union and M/s.ASK Agencies and IOC Bottling Plant, Salem over the issue of wage revision and other charter of demands.

This is to inform you that I shall hold conciliation proceedings under Section 12 of the Industrial Disputes Act, 1947, in the above mentioned dispute at 1100 hrs. on 14.2.2007 in the office of the

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LEO(c), Salem with a view to bringing about an amicable settlement of the dispute. You are requested to attend the conciliation proceedings in person or through a duly authorised representative with all relevant records and evidence, oral and documentary. Please note that if you fail to attend the proceeding without responsible cause being shown to me in advance of the aforesaid date, the dispute will be closed/proceeded ex-parte.

02. In this connection, your attention is invited to the obligations imposed by section 22(1)(d) for workmen Section 22(2)(d) (for employer) and Section 33 (for employer) of the Industrial Disputes Act, 1947.

03. In this context, it is hereby informed that since Section 33 of the Industrial Disputes Act, 1947, is invoked, the Contractor and the management of IOC LPG plant, Salem is to ensure the strict compliance of the same failing which necessary action as deemed fit will be taken without any further intimation.

Yours faithfully,
SD/- **********
(P.L.RAJENDRAN)
ASST. LABOUR COMMISSIONER (CENTRAL)
CHENNAI"

Thus, there is no dispute whatsoever with regard to the pendency of the proceedings before the first respondent between the petitioner and the respondents 2 and 3.

11. In view of the said pendency of dispute, section 33(1)(a) of the Industrial Disputes Act, 1947, gets attracted, which clearly states that during the pendency of any conciliation proceedings before a Conciliation Officer, no employer shall, in regard to any matter connected with the dispute, alter to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, except with the express permission in writing of the authority before which the proceedings is pending.

12. A Division Bench of this Court in the judgment reported in **2006 (3) LLJ 245 (A.V.P.Oozhiyar Sangam v. State Express Transport Corporation Ltd.)** considered the scope of section 33(1)(a) of the Industrial Disputes Act, 1947, following several judments of the Honourable Supreme Court and in paragraph 12 held as follows,

"12. In view of the clear pronouncement of law by the Supreme Court, there is no escape from the conclusion that when the order of reversion was passed against the workmen, the respondent/Management had committed breach of Section 33(1) of the Act by not passing the said order after obtaining the express previous permission in writing of the Conciliation Officer before whom the conciliation

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proceedings must be held to be pending till his report was forwarded to the State Government on October 14, 2005. The impugned retrenchment order must, therefore, be held to be illegal, being contrary to the provisions of the Industrial Disputes Act."

13. In the case before the Division Bench, the conciliation proceedings were over, however, the report was not forwarded to the State Government. Even in such a contingency it was held that section 33(1)(a) of the Industrial Disputes Act, 1947, is attracted and without obtaining previous permission in writing of the Conciliation Officer, no action could be taken by the management and if the management is permitted to violate the same, it will destroy the protection specifically and expressly given to an employee and also held that any action taken in violation of the mandatory provision of section 33 of the Act is void and inoperative and it is not necessary for the workman to approach the labour Court and when there is no factual dispute expressly, such an order can be interfered with under Article 226 of Constitution of India.

14. Even though the learned counsel for the petitioner as well as the contesting respondents cited various other decisions of the Honourable Supreme Court as well as this Court in support of their contentions, in view of the latest finding given by the Division Bench in the above referred judgment, other decisions cited need not be considered for deciding the prayer made in this writ petition.

15. The contention of the learned counsel for the second respondent that if at all the petitioner Union is aggrieved it can go before the Labour Court and seek an interim order is also unsustainable because unless and until the Conciliation proceedings are over, the petitioner Union cannot go before the Labour Court. Unless industrial dispute is pending before the Labour Court, the Labour Court cannot pass any interim order protecting the right of the workmen. There is a total bar on the part of the respondents 2 and 3 to alter the conditions of service of the workmen during the pendency of the conciliation proceedings before the first respondent as enshrined in section 33(1)(a) of the Industrial Disputes Act, 1947.

16. It is the specific case of the respondents 2 and 3 that they need not wait till the adjudication is over and no permission need be obtained from the Conciliation Officer to alter the conditions of service. The said stand being contrary to the above statutory provision and having regard to the fact that the first respondent passed an order on 18.1.2007 prohibiting reduction of staff, the petitioner is entitled to file this writ of mandamus forbearing the second and third respondents from reducing the staff strength of contract labourers employed by the third respondent unless and until the terms of the 12(3) settlement dated 5.3.2003

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is replaced or modified by a new settlement or award.

17. In view of the undisputed fact that the matter is pending at the conciliation stage before the first respondent, the respondents 2 and 3 are not entitled to alter the service conditions/reduction of manpower, without getting prior permission from the first respondent. If at all the respondents 2 and 3 are justified in reducing the manpower viz., staff strength, it is open to them to approach the first respondent seeking such permission and it is for the first respondent to consider the same and pass appropriate orders.

The writ petition is allowed with the above observations. No costs. Connected miscellaneous petitions are closed.

Vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Labour Commissioner (Central)
   Office of the Regional Labour Commissioner (Central),
   No.26, Haddows Road, Shastri Bhavan, Chennai - 600 006.

2. The Plant Manager, LPG Bottling Plant,
   Indian Oil Corporation,
   Government College Engineering Campus, Salem-636 011.

+ one cc to M/s. T.S. Gopalan and Co Sr no. 14102
+ one cc to M/s. Bala Haridoss, Advocate sr no. 14184

MS(CO)
NM(13.03.07)

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